



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL UNION, UAW

Complainant

v.

TOWN OF MERRIMACK

Respondent

CASE NO. M-0697
M-0702:1

DECISION NO. 94-49

APPEARANCES

Representing International Union, UAW:

Jerry Hurley, International Representative, UAW

Representing Town of Merrimack:

Heather M. Jeans, Esq., Counsel

Also appearing:

Richard Borden, Town of Merrimack
Robert T. LeVan, Town of Merrimack
Leonard C. Worster, Town of Merrimack
James R. Muirhead, Town of Merrimack
Dean E. Shankle, Town of Merrimack
Terri Mitchell, Town of Merrimack
Cindy McGuire, U.A.W.
Elaine Sevigny, U.A.W.

BACKGROUND

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) filed unfair labor practice (ULP) charges against the Town of Merrimack (Town)

on February 12, 1994 alleging discipline and discharge of union activists in an attempt to discourage organizational activity in violation of RSA 273-A:5 I (a), (b) and (g). Case No. M-0697. The Town filed its answer on February 25, 1994. On March 28, 1994, the UAW filed additional ULP charges alleging the use of disciplinary procedures to coerce employees and interfere with the formation and administration of an employee organization in violation of RSA 273-A:5 I (a) and (c). Case No. M-0702:1. These charges were due to be answered on or before April 12, 1994; however, the hearing in Case No. M-0697 before the PELRB commenced on March 31, 1994. At the commencement of that hearing, the parties agreed that the two cases should be consolidated for hearing and that the Town's answer in Case No. M-0697 would serve as its answer in both actions. The hearing before the PELRB concluded on April 5, 1994.

FINDINGS OF FACT

1. The Town of Merrimack is "public employer" within the meaning of RSA 273-A:1 X.
2. The International Union, UAW, is a labor organization which has been involved in a campaign to organize certain employees of the Town. The first scheduled meetings with Town employees were to occur on January 12 and 17, 1994. Both were canceled because of bad weather.
3. On January 24, 1994, a meeting to discuss organizing a bargaining unit was attended by twenty-eight (28) potential members. Prior to January 17, Cindy McGuire, Welfare Director/Purchasing Agent, had contacted Patricia Blaisdell, Executive Assistant to the Town Manager and Board of Selectmen, about the use of Town Hall meeting space for a union meeting. She was advised to use a room at the library. Also, on January 17, 1994, Cindy McGuire sent a memorandum to Richard Borden, Town Manager in which she notified him that she was directly involved in setting up the union organization meeting. She indicated to him that her action did not mean she was encouraging the establish-

ment of a bargaining unit.

4. On January 25, 1994, Patricia Blaisdell assigned to Terri Mitchell, a secretary who often does work for Mr. Borden, the task of adding the selectmen's revisions to a proposed personnel policy which was stored in the DEC-VAC computer system. This draft document was dated June 1993 and had originated with James Pitts, former acting Town Manager.
5. In order to access the draft document, Terri Mitchell consulted Elaine Sevigny, who was then an Accountant Clerk II, Programmer with the Town of Merrimack. She was the most knowledgeable person in the office regarding the DEC-VAC's system which had been installed in May, 1991 and which was equipped with Word Perfect software. Ms. Sevigny located the documents and otherwise assisted Ms. Mitchell.
6. At one point, Ms. Mitchell read over the document and exclaimed aloud to those around her that document proposed taking away employees' leave benefits. She continued working on the document until January 28, 1993. The document was printed out on January 29 and Elaine Sevigny obtained a copy or copies of the revised draft proposal. Ms. Sevigny believes that Mr. Borden observed her making copies of the revised document at the laser printer near his door.
7. Ms. Sevigny gave a copy of the document to Ms. McGuire. Testimony from Ms. Blaisdell indicates that Ms. Sevigny also discussed the contents of the document to employees of the Merrimack Police Department located in another part of the Town Hall. This was not refuted.

8. On Monday, January 31, 1994, Cindy McGuire was called into Mr. Borden's office by Patricia Blaisdell to discuss the draft personnel document. At the meeting, she denied having the document and was escorted out. Immediately thereafter, Elaine Sevigny was called into Mr. Borden's office by Ms. Blaisdell and was questioned regarding the draft personnel policy. She admitted taking copies of the document and giving a copy to Cindy McGuire. Mr. Borden recommended that she resign. After the meeting she consulted with Cindy McGuire who then returned to Mr. Borden's office and indicated that she had not been truthful and admitted that she had the document at home.
9. On Monday night, January 31, 1994 a union organizational meeting was held with a UAW representative present. Terri Mitchell testified that she attended the meeting and that the draft personnel policy was handed out.
10. Elaine Sevigny was called into Mr. Borden's office the next day. She was informed that she would be discharged with unfavorable terms if she did not choose to resign. Positive recommendations and a severance package were offered her if she would resign. Patricia Blaisdell prepared a letter of resignation which Ms. Sevigny signed. Sevigny signed a release document when she picked up her severance pay on Friday, February 5, 1994.
11. On February 3, 1994, Cindy McGuire was summoned to Mr. Borden's office. In the presence of Patricia Blaisdell, she too was offered the opportunity to resign in good standing and with a severance package. She refused to resign and was

told that serious discipline would result. She was given a one week suspension without pay. This was appealed to the selectmen who heard the matter and upheld Mr. Borden's decision. Cindy McGuire served her one week suspension and has returned to her position with the Town. She continues in that position today. Ms. Sevigny is elsewhere employed.

12. Much testimony was taken on the matter of the confidentiality of the draft personnel policy. There was evidence regarding protections within the Word Perfect system. There was testimony regarding the use of pink cover sheets marked "confidential." Both Cindy McGuire and Elaine Sevigny state that they had no reason to believe the documents in question were confidential. The Town's witnesses state that there was no need to mark such a document confidential since it was understood by all to be confidential. Indeed, Ms. Mitchell testified that, following her exclamation, regarding the contents of the document she warned Ms. Sevigny that the document in question was confidential. Testimony indicated that Ms. Sevigny had been warned on more than one occasion to observe generally accepted office practices regarding confidentiality.

DECISION AND ORDER

The Union would have us find that its organizers, Elaine Sevigny and Cindy McGuire, were entrapped by Town administrators who put the draft personnel policy at the disposal of the union organizers and then severely disciplined them for breach of confidentiality when the draft policy was used for union organizing purposes. We disagree.

The Union simply failed to carry its burden of proof in this case. Corrective actions taken with respect to Sevigny and McGuire were not shown to have been the product of animus or to have had a detrimental, coercive or intimidating effect on other

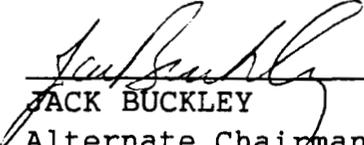
employees involved in the organizational campaign, either actively or passively. While Levan's comments evidencing personal sentiments and the disparate penalties (resignation versus suspension) may not depict the best of management styles, neither rises to the level of an unfair labor practice.

RSA 273-A:5 I forbids coercion, domination interference or intimidation of employee or employee groups engaged in organizing. These acts may be committed by an employer intentionally or unintentionally and are improper in either case. Here, the Union failed to show that any employees engaged in the organization process were or felt they were intimidated, dominated or coerced. For that matter, the Union called no witnesses other than the two employees who were disciplined. Under Appeal of White Mountains Education Association, 125 NH 771 (1984) the Union must have shown some minimal degree of anti-union motivation in order to prevail. It did not.

The ULP is hereby DISMISSED.

So ordered.

Signed this 14th day of June, 1994.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.
Members Seymour Osman and E. Vincent Hall present and voting.